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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

ARK, DARREN W

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 12/01/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/929,779

Applicant(s)

TOWNSEND, LYLE

Examiner

Darren W. Ark

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-35 is/are pending in the application.
- 4a) Of the above claim(s) 25,26,30,31 and 33-35 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-24,27-29 and 32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other:

DETAILED ACTION

Election/Restrictions

1. This application contains claims directed to the following patentably distinct species of the claimed invention: Species I - Figs. 1-7; Species II - Fig. 8; Species III - Figs. 9 & 10; Species IV - Fig. 11.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1 and 9-11 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over

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the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

2. During a telephone conversation with Dean Craine on Monday, June 17, 2002 a provisional election was made with traverse to prosecute the invention of Species I, claims 21-24, 27-29, and 32. Affirmation of this election must be made by applicant in replying to this Office action. Claims 25, 26, 30, 31, and 33-35 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Drawings

3. The corrected or substitute drawings were received on 2/28/02. These drawings are approved by the Examiner.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

5. Claims 21-23, 32 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Simpson 6,145,242.

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Simpson discloses a hollow outer housing (24, 26) with a flat bottom surface (26) that looks like a rock, an inner cavity (defined by 22), and a first side tunnel (32, 34; also see Fig. 6 with 42 forming part of the tunnel) extending under and inward and along the outside surface of the outer housing (extends on a lower portion of the outer housing which represents under and extends inward of the outer housing and extends along a portion of the outer housing) to at least one pest opening (over 42; see col. 3, lines 3-7) that is concealed from public view (depending upon the line of sight, the opening is concealed from public view since the outer housing is intended to disguise the operation of the bait station); a second side tunnel (other of 34 on other side); a holding tray (28 or 100); and means for terminating a pest (bait block to be engaged by 80).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Simpson 6,145,242 in view of Allen 2,896,361.

Simpson discloses the holding tray (28 or 100) located on the flat bottom (26) and being disposed in the inner cavity, but does not disclose the holding tray inserted through an opening formed on the flat bottom. Allen discloses a holding tray (51, 52, 54) with rodenticide (poisoned food) which is inserted through an opening (50) formed on the flat bottom (12) enabling the tray to be disposed in the inner cavity (within 11). It

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would have been obvious to a person of ordinary skill in the art to modify the tray of Simpson such that it is inserted through an opening formed on the flat bottom in view of Allen in order to positively secure the tray to the bottom while also providing a fast and efficient connection therebetween.

8. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Simpson 6,145,242 in view of Feussner 2,480,724 or Freeman 3,303,600.

Simpson discloses the holding tray (28 or 100) located on the flat bottom (26) and being disposed in the inner cavity, but does not disclose the holding tray inserted through an opening formed on the flat bottom. Feussner and Freeman disclose a holding tray (generally 1, 3 AND 10) with rodenticide (poisonous materials AND poison bait) which is inserted through an opening (open bottom of 7 AND open bottom of 12) formed on the flat bottom (8 AND 28) enabling the tray to be disposed in the inner cavity (within 7 AND within 12). It would have been obvious to a person of ordinary skill in the art to modify the tray of Simpson such that it is inserted through an opening formed on the flat bottom in view of Feussner or Freeman in order to simplify the process of gaining access to the tray by inserting the tray through a bottom opening without the need for other secondary operations and also to provide means for exchanging the tray such that the housing does not have to be substantially taken apart.

9. Claims 27-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simpson 6,145,242 in view of Hart 1,511,123 or Wiemer 1,349,177.

Simpson discloses the holding tray (28 or 100) located on the flat bottom (26) and being disposed in the inner cavity, but does not disclose a trap held by a holding

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tray located on the flat bottom and being inserted through an opening formed on the flat bottom. Hart and Wiemer disclose concealed traps (trap with jaw 18 AND trap with jaw 19) in a housing (10, 12, 17 AND 10) held by a holding tray (11 or 10 AND 14) which is inserted through an opening (defined by lower edges of 12, 12' AND defined by open bottom of 10) formed on the flat bottom (bottom edges of 12, 12' are flat AND flat bottom edges of sides of 10 [see Fig. 2]). It would have been obvious to a person of ordinary skill in the art to employ the trap of Hart or Wiember held by a tray which is inserted through a bottom opening in the device of Simpson in order to provide alternative trapping means which will kill and retain the rodents inside the housing so that they do no escape and become unsightly to the public and also to provide a means for easily taking the trap out for rodent disposal without totally dismantling the housing.

10. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Simpson 6,145,242 in view of Hight 6,266,917.

Simpson does not disclose a trap. Hight discloses a disguised pest control system wherein the housing includes a decorative unit comprising a planter compartment with a plant (4; see Figs. 1, 2, & 4) which is supported on a pedestal (6) and also pest control devices housed within the pedestal compartment (traps 28 with spring action trapping arm 32). It would have been obvious to a person of ordinary skill in the art to employ the spring-loaded trap of Hight in the device of Simpson in order to provide alternative trapping means which will kill and retain the rodents inside the housing so that they do no escape and become unsightly to the public.

Response to Arguments

11. Applicant's arguments filed 10/23/03 have been fully considered but they are not persuasive.

In regard to applicant's argument that "Simpson....two visible doorways 32 formed on its outside surface....", the Examiner contends that the openings were not recited with any particular detail to overcome the Simpson reference and that the inside openings (defined over 42) are in fact concealed from the public view since they are within the outer housing and spaced away from the exterior. Furthermore the doorways (32) could be interpreted as being hidden from public view if a person were to view the device from a position such that the doorways (32) are positioned perpendicular to the line of sight (located at lateral sides on the housing and to the left and right sides of the viewer).

In regard to applicant's arguments concerning the affidavit filed 10/15/02, the Examiner contends that the independent claim 21 is rejected under 35 U.S.C. 102(e) and that the issue is not whether the desired invention is considered non-obvious. The invention is clearly anticipated by the Simpson patent. The affidavit fails to distinguish how the prior art of record device of Simpson does not anticipate the desired invention and merely states that the desired invention is useful in preventing non-target species from entering the trap.

Conclusion

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darren W. Ark whose telephone number is (703) 305-3733. The examiner can normally be reached on M-Th, 8:00am-6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on (703) 308-2574. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9326 for regular communications and (703) 872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.


Darren W. Ark
Primary Examiner
Art Unit 3643

DWA